

Monitoring Immigration Detention

REVIEW OF THE OMBUDSMAN'S ACTIVITIES IN OVERSEEING
IMMIGRATION DETENTION

July–December 2019

Report by the Commonwealth Ombudsman,
Michael Manthorpe PSM, under the *Ombudsman Act 1976*

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CONTENTS

FOREWORD	4
PART 1: INTRODUCTION	6
Basis for immigration detention	6
<i>Legislative framework</i>	<i>6</i>
<i>Administrative framework.....</i>	<i>7</i>
Oversight regime.....	7
<i>Statutory reporting—Long term detainees</i>	<i>7</i>
<i>Complaints.....</i>	<i>7</i>
<i>Detained released not unlawful</i>	<i>7</i>
<i>Inspection framework.....</i>	<i>8</i>
Inspection methodology	8
PART 2: PROGRESS AGAINST RECOMMENDATIONS	10
PART 3: 4860 ASSESSMENTS	11
Duration of detention	11
Placement	12
PART 4: COMPLAINTS	13
Spotlight issue—Internal complaint handling	13
Spotlight issue—Use of force.....	14
PART 5: DETAINED AND RELEASED AS NOT UNLAWFUL.....	16
PART 6: INSPECTION OUTCOMES	17
Detention and immigration procedures	17
<i>Access to legal support.....</i>	<i>17</i>
<i>Arrival and reception.....</i>	<i>17</i>
Transport and escort.....	18
<i>Transfer operations</i>	<i>18</i>
<i>Release</i>	<i>19</i>
<i>Removals.....</i>	<i>19</i>
Treatment and safeguards.....	20
<i>Torture and other ill-treatment.....</i>	<i>20</i>
<i>Isolation.....</i>	<i>20</i>
Use of force.....	22

Safety and security.....	23
<i>External inspection</i>	23
<i>Bullying and victimisation</i>	23
<i>Contingency plans</i>	24
Facilities.....	24
<i>Accommodation</i>	25
<i>APODs</i>	25
<i>Food and drinking water</i>	26
<i>Sanitation and hygiene</i>	26
Property	26
<i>Clothing</i>	26
<i>Cash and possessions</i>	27
Welfare and engagement	27
<i>Programs and activities</i>	27
<i>Education</i>	27
<i>Culture and religion</i>	28
<i>Welfare and counselling</i>	28
Visits and external communication	29
<i>Visits</i>	29
<i>External communication</i>	29
Health Care	29
<i>Access to medical care</i>	30
Personnel/staffing.....	31
<i>Staff/detainee relationships and security</i>	31
<i>Staff Recruitment, training and conduct</i>	31
Persons in situations of vulnerability/risk	31
<i>Basic Principles</i>	31
<i>Children</i>	31
<i>Women</i>	32
<i>Persons with mental or physical disability</i>	32
<i>Stateless persons</i>	33
<i>LGBTQIA+ persons</i>	33
APPENDIX A	34
APPENDIX B	39

FOREWORD

This report summarises the Commonwealth Ombudsman’s oversight of immigration detention during the period from July to December 2019. It draws on observations from our inspections of immigration detention centres during the period, as well as other aspects of the Office’s oversight including handling complaints, analysis of the number of lawful non-citizens detained and subsequently released and assessing the circumstances of people in long-term detention.

During this period, the Office conducted inspections of immigration detention facilities in Brisbane QLD, Adelaide SA, Perth WA, Northam WA, Villawood NSW and Melbourne VIC. These inspections were undertaken in accordance with the Ombudsman’s own motion notice to the Department of Home Affairs (the department) issued on 30 July 2018.

At the conclusion of each inspection, we communicate our observations and suggestions to the department. This means all of the issues in the body of this report have been raised previously with the department.

It is pleasing to note that although the department has not had the opportunity to fully implement the recommendations arising from the previous report, 15 of the 16 recommendations I made have been agreed to in full or in part. I will continue to monitor the implementation of my recommendations.

The report outlines overall improvements in a number of areas ranging from the provision of welfare services to transport and escort tasks within the alternative places of detention. I am still concerned about shortfalls in privacy and mobility access within the modular high security compounds, the management of complaints, use of restraints and security risk assessments. Of particular note is our increasing concerns about the use of force in detention facilities, and the report includes a focus and recommendations on this issue.

I have included, for the first time, some observations arising from the reports the department provides on the circumstances surrounding the detention of lawful non-citizens and their subsequent release. It is positive to note that the numbers of lawful non-citizens detained in error has both decreased in number and in the time spent awaiting resolution of their status.

I provide reports to the Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs on people held in long-term detention in accordance with s 486O of the *Migration Act 1958* (the Act). I remain concerned that people continue to be held for lengthy periods with, in some instances, no probability of being released in the foreseeable future. Delays in resolving the immigration status of detainees place considerable strain both on detainees and their families. I will continue to make recommendations to the Minister in this area.

Since the completion of the period covered by this report we have seen the impact that the COVID-19 pandemic has had on immigration detention. The COVID-19 pandemic presents particular risks in detention environments, but also challenges for inspection bodies.

The Office has been actively monitoring the department’s response to the COVID-19 pandemic including its infection control measures across the immigration detention network. The department has implemented strategies across the network, which are

informed by the [CDNA Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia](#) (the CDNA Guidelines). The Office’s monitoring of immigration detention facilities at this time is particularly focussed on how these guidelines are adhered to by facilities in practice. These practices are the subject of a separate statement.¹

I have made 12 recommendations in this report, four relating to the use of force and eight arising out of my inspection of immigration detention facilities. I acknowledge the department’s response to my report (which is published as **Appendix A**), in which it agrees with 11 of the 12 recommendations in full or in part. We will monitor the steps the department takes in relation to these recommendations at our subsequent inspections, particularly with respect to use of force, and I will comment on these in future reports.

Michael Manthorpe PSM
Commonwealth Ombudsman

¹ https://www.ombudsman.gov.au/_data/assets/pdf_file/0013/111235/1-July-2020-Statement-by-the-Commonwealth-Ombudsman-Michael-Manthorpe-on-the-management-of-COVID-19-risks-in-immigration-detention-facilities.pdf

PART 1: INTRODUCTION

1.1. The *Migration Act 1958* (the Act) enables the detention of unlawful non-citizens, such as those who enter or remain in Australia without a valid visa. Detention has been mandatory for all unauthorised maritime arrivals since 1992² and for people whose visas have been cancelled on character grounds since 2014.³ While placement in an immigration detention facility is mandatory for certain cohorts, it is administrative in nature—that is, an individual is detained for the purpose of conducting an administrative function, rather than for rehabilitation or punishment.

1.2. The Commonwealth Ombudsman’s oversight of immigration detention includes a combination of:

- a. preparing assessments of the circumstances of people who have been detained for more than two years and, where appropriate, making recommendations to the Minister
- b. investigating complaints from detainees and/or their advocates
- c. analysis of the circumstances surrounding the detention and subsequent release of lawful non-citizens
- d. periodic inspections of Australian immigration detention facilities (IDFs).

1.3 We also follow-up on implementation of recommendations we made, and the department accepted, in previous reports.

Basis for immigration detention

Legislative framework

1.4 The Act enables the detention of unlawful non-citizens. The *Migration Legislation Amendment Act 1989* (the Amendment Act) effectively introduced a policy of ‘administrative detention’ for all people entering Australia without a valid visa, or any others present in the country unlawfully while their immigration status was resolved.⁴

1.5 The Act provides the legislative authority to detain unlawful non-citizens,⁵ but does not provide direction about how an IDF should operate. This means that the actions required to maintain the safety, security and wellbeing of both detainees and staff are set out in policy and procedures rather than legislation.

1.6 The Act provides the option for the department to detain unlawful non-citizens. We are satisfied that the department has protocols and policies in place to ensure that all persons detained have their current immigration status assessed as soon as practical and are detained or released as appropriate. These arrangements are discussed in more detail in Part 5 of the Report.

² *Migration Amendment Act 1992*.

³ Direction No. 65 *Migration Act 1958* Visa refusal and cancellation under s 501 and revocation of a mandatory cancellation of a visa under s 501CA dated 22 December 2014.

⁴ Phillips, J and Spinks H, *Immigration Detention in Australia*, 20 March 2013 Parliamentary Library

⁵ *Migration Act 1958* s 189.

1.7 These processes include multiple points of internal review post detention and reporting regimes to external authorities such as this Office, detailing the circumstances where a lawful non-citizen has been incorrectly detained. Our review of these circumstances suggest that where a lawful non-citizen is incorrectly detained they are released as soon as the error is identified (see Part 5). Most errors appear to relate to inaccurate departmental records.

Administrative framework

1.8 In 1992 Australia adopted a policy of mandatory detention for all unauthorised maritime arrivals⁶ and in 2014 extended the policy to people whose visas were cancelled on character grounds.⁷

1.9 The policy framework that supports immigration detention is reasonably robust with policy and procedural guidelines in place for both the ABF and contracted service providers. These include the Detention Standard Operating Procedures (DSOPs), Detention Procedural Instructions, Detention Service Provider Policy and Procedure Manuals (PPMs), Officer Station guidelines and various local directives and guidelines.

Oversight regime

Statutory reporting—Long term detainees

1.10 Under s 486O of the Act, the Ombudsman is required to assess the appropriateness of arrangements for people who have been detained for two years, and then every six months thereafter, for as long as the person remains in detention. The Office provides these assessments, including any recommendations, to the Minister who is then required to table a de-identified copy of each assessment in Parliament. Links to the de-identified assessments are made available on the Office's website.

Complaints

1.11 The Office investigates complaints from detainees, their legal representatives or their advocates. Detainees can also speak with the Office's inspection staff during inspections of facilities to complain or provide feedback about any aspect of their detention. Depending on the nature of the complaint, possible outcomes can include an apology, a better explanation of a decision, an update on the progress of their case, or a practical outcome such as relocation within a facility or the detention network.

Detained released not unlawful

1.12 The department provides this Office with a six monthly report on people who have been detained on suspicion of being an unlawful non-citizen who have been found subsequently to be not unlawful and have been released from detention. This information is

⁶ Joint Standing Committee on Migration, *Immigration detention in Australia: a new beginning: criteria for release from detention*, First report of the inquiry into immigration detention, House of Representatives, Canberra, December 2008.

⁷ Direction No. 65 *Migration Act 1958* Visa refusal and cancellation under s 501 and revocation of a mandatory cancellation of a visa under s 501CA dated 22 December 2014 and Direction No. 79 *Migration Act 1958* Visa refusal and cancellation under s 501 and revocation of a mandatory cancellation of a visa under s 501CA dated 28 February 2019.

analysed and provides a further safeguard against the long term detention of lawful non-citizens.

Inspection framework

1.13 The Office has been inspecting the administration and operation of immigration detention facilities since mid-2011. Traditionally these inspections have focused on the administration of areas like security, accommodation, nutrition, welfare and healthcare, all of which have an underlying human rights component.

1.14 During 2019–20 we started gradually adjusting and expanding our capability to inspect immigration detention facilities as the National Preventive Mechanism for places of detention under the control of the Commonwealth.

1.15 The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)⁸ is an international agreement aimed at preventing torture and mistreatment, with a focus on places where people are deprived of their liberty. To demonstrate compliance with OPCAT, member countries are required to establish a preventive inspection regime of all places of detention including, but not limited to immigration detention facilities, defence detention facilities, police cells, prisons, juvenile detention centres and closed psychiatric facilities.

1.16 Australia has ratified OPCAT and is required to establish an NPM network, with designated NPMs for each State and Territory, by January 2022.

1.17 Inspections of detention facilities can be either announced or unannounced. In this reporting period all inspections were announced, with facilities receiving at least six weeks' notice of our visit. The schedule for visits in the period from July to December 2019 was:

Immigration Detention Facility	Location	Dates
Adelaide Immigration Transit Accommodation (ITA)	Adelaide SA	3–4 October 2019
Brisbane ITA	Brisbane QLD	9–13 December 2019
Melbourne ITA	Melbourne VIC	7–9 August 2019
Perth Immigration Detention Centre (IDC)	Perth WA	25–27 November 2019
Transfer Operation	Melbourne-Sydney-Brisbane-Darwin-Perth-Melbourne	7 November 2019
Villawood IDC	Villawood NSW	11–15 November 2019
Yongah Hill IDC	Northam WA	14–18 October 2019

Inspection methodology

1.18 During the period from 1 July to 31 December 2019 the Office assessed the immigration detention network utilising our existing methodology, while also having regard to the United Nations (UN) High Commission for Refugees (HCR), Association for the

⁸ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx> .

Prevention of Torture (APT) and International Detention Coalition: *Monitoring Immigration Detention Practical Manual*⁹ and *Monitoring Questionnaire*,¹⁰ and other relevant United Nations Conventions and legislation.

1.19 The inspection process involves a mix of onsite and offsite assessments of ABF and service provider processes and procedures which includes assessing documents and other records, viewing footage of incidents, interviewing staff, observing various operational functions and engaging with detainees.

1.20 In June 2020, we provided the department with the opportunity to comment on our draft report and recommendations. That response is included at Appendix A.

⁹ https://apt.ch/content/files_res/monitoring-immigration-detention_practical-manual.pdf

¹⁰ <https://www.unhcr.org/en-au/protection/detention/5819abb24/monitoring-immigration-detention-monitoring-questionnaire.html>

PART 2: PROGRESS AGAINST RECOMMENDATIONS

2.1 In our first published report in February 2020¹¹ we made 16 recommendations to improve arrangements for the safety, security and wellbeing of detainees. These ranged from the introduction of a robust legislative framework to underpin detention operations to record management practices and complaint management. The department agreed to all of our recommendations in full or in part.

2.2 We are conscious that the report in which those recommendations were made was published in February 2020, after the end of the inspection cycle covered by this report. In turn, it would be unreasonable to expect that our inspections between July and December 2019 would reflect improvement specifically against the recommendations.

2.3 However, it should be noted that, at the completion of each inspection, Ombudsman inspection staff meet with local ABF and contracted provider staff to provide feedback on issues arising at the facility. These concerns inform, and are the basis of the recommendations we subsequently put to the department for their response. Although our February 2020 report had not yet been finalised at our inspections between July and December 2019, we were pleased to note that some of the recommendations published in the report had been implemented at a local level, either in full or part.

2.4 Noting the timing issues above, we have not repeated previous recommendations in this report, even where we consider the issues remain current. Instead we have included, at Appendix B, our analysis of the department's progress against each of the original recommendations as at the conclusion of the July to December 2019 inspection period. In some instances we have noted that a recommendation has been fully implemented. In all other instances we will continue to monitor the department's progress in subsequent inspection periods.

¹¹ https://www.ombudsman.gov.au/_data/assets/pdf_file/0017/109700/Immigration-Detention-Oversight-Report-January-to-June-2019.pdf

PART 3: 486O ASSESSMENTS

3.1 Under s 486N of the Act, the department is required to provide the Ombudsman with reports about each person who has been detained for more than two years, and every six months thereafter. Under s 486O, the Ombudsman then provides the Minister with his assessment of the circumstances of each person's detention, including any recommendations he considers appropriate.

3.2 During the period covered by this report, there were two common issues arising in the Ombudsman's assessment of the circumstances of individuals under s 486O of the Act, the duration of their detention and the suitability of their placement.

Duration of detention

3.3 We remain concerned about the number of people who remain in immigration detention for prolonged periods pending resolution of their immigration status. The Department of Home Affairs, through its status resolution function, has an established review cycle¹² of each detainee's circumstances and the progress of their immigration case. In some cases, this enables the person's period of detention to be brief because the review leads to them being granted a substantive visa or some form of bridging visa, or because they return to their home country as a result of being denied a visa. However, in some instances people are detained for more than 10 years.

3.4 Between July and December 2019, we sent 234 assessments to the Minister, which had all been tabled in Parliament as of March 2020.¹³

3.5 In the 234 assessments, the Ombudsman made 84 recommendations regarding 112 detainees. This included 26 recommendations for Off Shore Transitory visa holders who were transferred to Australia from a regional processing country (RPC) for medical treatment or to support a person receiving medical treatment. These recommendations generally asked the department to explore all available options to allow these individuals to reside in the community pending the durable resolution of their circumstances.

3.6 The Ombudsman also made 18 recommendations that detainees be considered for a bridging visa, ten recommendations for community placements and eight recommendations that detainees be relocated within the detention network.

3.7 People in held immigration detention are not serving a criminal sentence, and similarly they are not able to apply for parole. Through our assessments, we are aware of the length of time it is taking to resolve the immigration status of some people in held detention. We encourage the department to continue to consider the appropriateness of these people residing in held detention while their status is being resolved.

3.8 The Ombudsman will also continue to make recommendations in cases where, having regard to all the circumstances, he considers it may be appropriate for detainees to be released from held detention.

¹² Depending on the detainee's circumstances the review cycle will vary from every 28 to 90 days.

¹³ Under s 486P of the *Migration Act 1958* the Minister is required to table assessments within 15 sitting days of receiving them.

Placement

3.9 The placement of detainees continues to be a significant issue in the Ombudsman's assessments of persons detained for more than two years. We remain concerned that detainees are being placed in locations away from family, friends and other support networks.

3.10 We acknowledge that the department has to balance several competing priorities when considering placement and not all detainees can remain in their original or preferred location. However, we remain concerned that these placements do not always give sufficient weight to the impact on the family when a parent is placed in a detention facility they cannot easily access.

3.11 In this reporting period, the Ombudsman made 18 recommendations about detainee placement; eight to move the detainee to another IDF to be closer to their family, legal representatives or support network and ten to grant a community placement.

3.12 In response, the Minister advised that in two cases the detainee had been relocated as recommended, one detainee's visa was reinstated, one transfer was not supported for security reasons, and four people no longer wished to be relocated. Of the ten recommendations to grant a community placement: one detainee was granted a community placement under a Residential Determination; one detainee was removed from Australia; three cases were referred for assessment or submission to the Minister for consideration of a community placement; two cases were referred for an assessment or submission to the Minister for consideration of a community placement or a bridging visa; in one case, a submission was being prepared for consideration by the Minister for the grant of a bridging visa; one case did not meet the guidelines for referral to Minister; and in the final case, the Minister declined to intervene to grant a community placement.

PART 4: COMPLAINTS

4.1 Between July and December 2019, the Office received 110 complaints about the operations of immigration detention facilities. Of these, we referred 45 to the ABF for resolution and the inspection team resolved 20 on site. The remainder were referred internally for assessment and possible investigation.

4.2 The subjects of these complaints have not varied from previous inspection cycles. The top five complaint areas remain, health services (35), transfers (10), complaint handling (10), loss of or access to property (9) and use of force (8).

Spotlight issue—Internal complaint handling

4.3 It is vital that complaint handling processes within each facility are working well. We are satisfied that detainees have access to a confidential complaints process and are able to make requests for a variety of things ranging from items in the canteen to special purpose visits.

4.4 We did not note any significant anomalies in the management of detainee requests, and observed that most requests were addressed within a reasonable timeframe. We acknowledge it is not possible to agree to every request, especially those relating to placements elsewhere in the detention network or facility, but were satisfied the department was acknowledging and responding to detainees' requests appropriately.

4.5 The Serco Complaints Management Policy and Procedure Manual (PPM) was introduced during the January to June 2019 inspection cycle, which we had hoped would foster improvements in complaint handling processes. However, we observed that the standard of complaints management remained inconsistent across the network, including significant variation in record-keeping practices. Many of the complaint records we viewed were incomplete and did not provide adequate information to demonstrate what the complaints officer considered, the weighting they gave to the information available, or how they reached their conclusion.

4.6 At a minimum, the records of a complaint investigation should include details of:

- a. interviews with staff, detainees and other witnesses
- b. analysis of relevant closed-circuit television (CCTV) or body camera footage
- c. documents viewed, such as officer reports and incident reports
- d. policies and procedures that are relevant to the circumstances of the complaint
- e. how the officer weighed the available information to form a final position.

4.5 It is also essential that outcome letters provide a clear explanation of the investigation and decision in response to a complaint. We found that the quality of these letters was variable. Good quality responses are written in plain language, address all the issues raised, and provide an explanation of the steps taken to resolve the complaint and the outcome and conclusions drawn. In contrast, many of the response letters we reviewed were incomplete, did not address all the issues raised, failed to adequately explain the outcome or used overly legalistic language.

4.7 We concluded that these variations were reflective of a lack of quality assurance before complaints are finalised, to ensure the complaint records are complete and the response is clear, reasonable and addresses all issues.

Spotlight issue—Use of force

4.8 A detainee contacted the Office in early 2019 to complain about being injured as a result of Serco officers' excessive use of force when restraining them at an immigration detention facility.

4.9 We investigated the complaint by considering CCTV footage, body camera video, incident reports, medical reports, complaint records, policy and procedures and the department's response to our questions.

4.10 We concluded that the force used was outside standard operating procedures and did not appear to have a lawful basis. The procedures provide for the use of force by officers to defend themselves, prevent a detainee from harming themselves or another person, to prevent a detainee from escaping immigration detention, or to prevent damage to property.

4.11 We found that the circumstances in this case did not fall within the procedures, as the detainee's behaviour was merely obstructive but they were not threatening staff, being physically aggressive or otherwise resisting being detained. Further, in the circumstances, we found the use of force was excessive given they did not appear to pose a risk to themselves or any other person.

4.12 We also found that the investigations undertaken by Serco and the department into the concerns raised by our Office were inadequate. In particular, Serco and the department did not appropriately share the outcomes of their investigations with the individual concerned, despite a complaint being raised.

4.13 In response to our investigation, the department advised it has commenced a review of the use of force at the detention centre, in part due to the concerns raised in this complaint and other observations made by the Office. While we acknowledge this step, we are still concerned about the time taken to commence a review, noting the incident occurred in late 2018.

4.14 We also suggested the department obtain legal advice regarding the limitations on the protected use of force in all states in which detention facilities operate, and the department advised it is doing so.

4.15 The findings of this investigation, combined with our observations from immigration detention inspections over recent years, has revealed some broader issues with use of force in immigration detention. We make the following recommendations to the department to address this issue.

Recommendation 1

The department remind staff that they are not to use force for purposes that are not outlined in the procedures and reinforces the potential consequences of using force for other purposes.

Recommendation 2

The department ensure that reviews of use of force undertaken by their Detention Assurance Team are completed within six months of the incident being referred to them. This may mean developing a six monthly forward plan. If the review is not completed in a timely manner, this is reported to the Risk and Audit Committee.

Recommendation 3

The department provide feedback to Serco that the response to this complaint was inadequate and update guidance to confirm that where an internal report has identified room for improvement in the department's handling of a matter, this can and should be shared with the complainant (even if in general terms).

Recommendation 4

The department provide an apology to the complainant, for both the use of force and the way the complaint was managed.

4.16 We will continue to monitor, investigate and provide feedback on issues arising from the use of force in immigration detention.

PART 5: DETAINED AND RELEASED AS NOT UNLAWFUL

5.1 The department provides the Office with a six monthly report on people who have been detained, on suspicion of being an unlawful non-citizen, who have been found subsequently to be not unlawful and have been released from detention.

5.2 Historically, poor administrative practices and ineffective quality control has affected the accuracy and quality of information in departmental systems. For example, for people who entered Australia as children as dependents on a parent's visa, the department may not have clear records demonstrating their residential or citizenship status. These issues continue to contribute to errors in decision-making which leads to inappropriate detention.

5.3 The department has assessed that a data cleanse would be prohibitively expensive as a treatment given the large number of individuals and practical difficulties in identifying records affected by errors. In these cases, the department has taken a risk managed approach and mitigated the risk through the introduction of systems, tools and procedures, training, quality control and assurance, rather than addressing the root cause of the issue.

5.4 While the department has taken action to address issues leading to inappropriate detention, Australian citizens and lawful non-citizens are still detained on occasion. However, the department's controls appear to have been increasingly effective at preventing, detecting and correcting the numbers and duration of inappropriate detentions, with the average duration of inappropriate detention significantly decreasing from a peak of 96 days in 2017 to an average of 4.9 days in July to December 2019. We have also observed that the total number of people inappropriately detained, as a percentage of the total number of people detained, decreased from 0.7 per cent to 0.4 per cent between the January to June 2019 and the July to December 2019 reporting periods.

5.5 To seek assurance that the measures implemented by the department are effective at continuing to stabilise and reduce the number and duration of inappropriate detention, we propose to continue monitoring the department's six monthly reports on persons detained and later released as not unlawful. Specifically, we will be seeking assurance through this monitoring that the efficacy of the controls for detecting and preventing inappropriate detentions is sustained and that new and emerging issues are appropriately addressed.

5.6 In the last few years, we have observed the department is increasingly focused on taking both detective and preventative corrective actions aimed at treating systemic issues and managing broader risks that affect certain cohorts, over narrowly focusing on remediation activities relating to particular cases. Specifically, most improvements seem to be made in the detection of inappropriate detention. There remains an important role for the Office to continue to monitor and advise on improvements and effectiveness of preventative action.

PART 6: INSPECTION OUTCOMES

Detention and immigration procedures

Access to legal support

6.1 Detainees have access to a series of external independent administrative and judicial review options. However, we remain concerned that detainees may not be aware of their right to access these services. While the Act requires the department to facilitate access to legal support if requested,¹⁴ it does not require the department to advise detainees of the options open to them, or to source or fund legal support.

6.2 Advocacy groups can assist detained asylum seekers to access pro bono legal support. If detainees require legal assistance for matters not related to their immigration status, they have the same level of access to Legal Aid as a member of the Australian community.

6.3 During this inspection period we again noted there was no signage in any facility alerting detainees to their right to access legal support. Service provider staff advised they provide detainees with information about review during the induction process, but this information did not appear to be reinforced following the initial induction.

6.4 Notwithstanding the lack of information about legal support, we did not find any evidence that detainees were discouraged from seeking legal support or that lawyers seeking to consult with their clients were denied access to any immigration detention facility.

Recommendation 5

We recommend that the department places signage in all detention centre compounds advising detainees of their right to access legal services.

Arrival and reception

6.5 During this inspection period we undertook a limited review of the arrival and reception procedures across the immigration detention network. We noted that all facilities had an established induction and reception process that covers the primary topics a detainee needs to know, for example, how to access medical services, code of conduct and centre routines.

6.6 Detainees are permitted to retain their mobile telephones and, where a detainee does not have a mobile telephone, they can access landlines to contact family, legal counsel or oversight bodies in private. We did not note any restrictions being placed on telephone usage.

6.7 We noted an improvement in the availability of multilingual induction packages with packages now available in languages other than English. However, we remain concerned that there are no processes in place to support detainees who are unable to read the

¹⁴ *Migration Act 1958* s 256.

documents for reasons such as cognitive impairment, illiteracy, poor sight or another impediment.

Recommendation 6

We recommend that the department ensures that an interpreter or other appropriate support is used where a detainee's ability to read or comprehend induction information is impaired.

6.8 We are satisfied that all detainees undertake an initial health screening when they arrive in a facility or shortly thereafter. These screenings are consistent with the standards delivered to the broader Australian community and are provided by qualified health practitioners using the same standards and conditions that a member of the community would expect if they were to undertake a similar health assessment.

Transport and escort

Transfer operations

6.9 We assess at least one transfer operation per inspection cycle (paragraph 1.9 above). Transfer operations involve the transfer of a group of detainees by a chartered aircraft from one facility to another for operational reasons ranging from freeing up bed spaces in facilities to pre-positioning detainees for court hearings, medical appointments or removals.

6.10 We are satisfied that detainees involved in transfer operations are generally treated with dignity and respect throughout the operation. We have noted that the level of notice given to detainees prior to transfer varies and depends on factors including the general level of compliance in the facility and the security assessments of the individuals involved.

6.11 Where a detainee is compliant and does not present a risk to the conduct of the transfer, the maximum notice of 24 hours is generally provided. However, if earlier notification would jeopardise the transfer operation, the detainee may not receive any notice of the move.

6.12 It is preferable for detainees to receive notice as early as possible, so they have the opportunity to notify family and legal representatives, pack their personal belongings and prepare for the transfer.

6.13 Detainees involved in a transfer operation are not permitted to carry any reading material or other items to occupy them during the flight. The current practice is for detainees to be seated for the duration of the flight, with the option to look out the window, sleep, or engage escorting staff in conversation. In our discussions with charter flight operations managers¹⁵ they indicated they would not consider detainees having books, magazines or newspapers to pose a threat to the security of the flight. Discussions with detainees who have participated in a transfer operation suggest that the opportunity to access suitable reading material would be welcomed and would reduce the stress imposed by the transfer.

¹⁵ Sky Traders.

Recommendation 7

We recommend that the department considers permitting detainees to access books and magazines during transfer operations.

6.14 We also have some concerns about the way in which detainees are restrained during transfer operations, which are discussed at paragraph 6.32.

Release

6.15 The department has a specific timeframe in which it must discharge a detainee from immigration detention once a visa has been granted. We are satisfied that the processes and procedures in place to discharge a detainee are appropriate and ensure the detainee is released with sufficient medication, their property and, where appropriate, travel assistance to return to their home state or territory. We were not onsite for any discharges during this inspection cycle, though, so did not assess this process in practice.

6.16 We are satisfied that, where a detainee is released into the community on a visa and does not have appropriate identification, the department has processes in place to provide them with identity documents that are recognised by Commonwealth, state and territory governments.

Removals

6.17 Removals of unlawful non-citizens from Australia may be voluntary (the detainee chooses to be returned to their country of origin) or involuntary. The decision to remove, and the assessment process including non-refoulement considerations,¹⁶ are both undertaken outside the immediate operations of the detention network. We are yet to assess these processes as part of our National Preventive Mechanism inspections.

6.18 Once the decision to remove has been made, the process depends on whether the removal is voluntary or involuntary. Unless there are significant medical or security considerations for a detainee or a large number of removals to the same country, most removals occur using commercial airlines in accordance with their flight schedules.

6.19 Where a detainee is being removed voluntarily, the department provides them with as much advance notice of the removal as possible, usually at least 48 hours. This enables the detainee to settle their financial affairs and arrange visits from family and friends prior to their departure. Where a detainee is to be removed involuntarily, the notice the department provides will be dependent on a number of factors including the individual's previous levels of compliance.

6.20 We are satisfied that, where a removal is to occur, the detainee:

- a. is assessed by medical staff to ensure they are fit to travel, and the removal postponed if the detainee is not cleared to travel

¹⁶ Under international human rights law, the principle of non-refoulement guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm. This principle applies to all migrants at all times, irrespective of migration status.

<https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>

- b. is provided with sufficient medication to assist them until they can organise medical treatment in the receiving country
- c. is provided with information to source appropriate welfare support services¹⁷ or other support mechanisms, where available in their country of return
- d. has their personal property including valuables and money returned
- e. is transported, restrained and escorted in accordance with the commercial airline's policies and procedures.¹⁸

Treatment and safeguards

Torture and other ill-treatment

6.21 We are satisfied the department has processes and procedures in place to support detainees who advise they have a history of torture and trauma or whose behaviour causes staff to consider they may have a history.

6.22 Initial health screening is attuned to the possibility of a detainee being a victim of torture or trauma, especially in cases where a claim for asylum is made. The department has also engaged with specialist torture and trauma counsellors in each state and territory to provide counselling services to detainees who require it.

Isolation

6.23 The department has a comprehensive policy for managing detainees who are isolated for reasons including:

- a. managing significant non-compliant behaviour (including violence or damage to property) by providing a secure low stimulus environment in which a detainee can deescalate at their own pace
- b. medical isolation in accordance with public health policies, or managing another medical condition that cannot be readily addressed in a residential compound¹⁹
- c. mental health respite where a detainee requests a break from their immediate surrounds.

¹⁷ Detainees are encouraged to access Prisoners Abroad and similar organisations who may assist their return. Asylum seekers and failed refugees who meet the criteria (including the country of origin) are encouraged to seek assistance from the International Organisation for Migration

¹⁸ Removals may be accompanied or unaccompanied and/or mechanically restrained. As a general rule a voluntary removal, regardless of risk assessment, is unlikely to be restrained and may be unaccompanied.

¹⁹ This includes infectious disease control in accordance with the relevant State and Territory Public Health legislation and supporting policies, management of certain illnesses where placement in a residential compound is not appropriate or contraindicated for ongoing treatment.

6.24 During this inspection cycle we reviewed the use of High Care Accommodation (HCA) and noted the following:

- a. The facilities in each facility vary considerably in both use and purpose. For example:
 - i. Brisbane ITA's HCA designated compound has been used to manage non-compliance, but has not yet been used for medical isolation or mental health respite.
 - ii. Adelaide ITA does not have an area that supports managing non-compliant behaviours but does have a series of rooms that can be used to support medical or mental health needs.
 - iii. Yongah Hill IDC has a compound specifically for behaviour management and another area to manage medical and mental health needs.
 - iv. Melbourne ITA and Villawood IDC each have a compound that can be used for both non-compliance and medical and mental health needs.
- b. Placement of detainees in this environment was reasonable in each of the reviewed circumstances.
- c. The various tactical holds and restraints used to move non-compliant detainees to HCA were in accordance with approved procedures. In the cases we reviewed we considered the decision to use force to be reasonable and proportionate and aligned to accepted best practice.
- d. Detainees placed in the HCA for behaviour management purposes were reviewed daily except in instances where appropriate approval is in place for a longer-term placement.
- e. Placement for medical isolation or mental health reasons was initiated by the appropriate health services staff and approved by senior ABF staff.
- f. There was no evidence to suggest any detainee was denied access to medical or mental health support while held in HCA.
- g. there was no evidence to suggest that detainees were not treated with dignity or subjected to inappropriate or unauthorised activity while placed in the HCA.

6.25 Our inspections did not identify any instances where HCA was used inappropriately, including for punitive purposes. However, the threat of placement in HCA being used by a small number of Serco staff, raised in our previous report,²⁰ continues to occur and is a poor reflection on the quality of dynamic security practices within facilities.

Recommendation 8

We recommend that the department, in conjunction with its service providers, address the use of threats of placement in HCA to influence detainee compliance, through additional training to assist staff in managing non-compliant behaviour.

²⁰ Commonwealth Ombudsman Report 01/20, *Department of Home Affairs: Immigration Detention Oversight, Review of the Ombudsman's Activities in Overseeing immigration detention January to June 2019*, February 2020. p.20.

Use of force

6.26 At each inspection, we review how each critical incident since our previous inspection and major incidents that occurred during the preceding six weeks were handled. This includes assessing Incident Reports, Officer/Use of Force Reports and Post Incident Reports, and viewing relevant video footage. We also review the Transport and Escort (T&E) transport escort orders and accompanying logs, plus video footage where available.

6.27 Based on these inspections, we are satisfied that, where mechanical restraints are applied, the restraints are regularly checked, especially during long haul transfers. We are also satisfied that, at the conclusion of the escort task, the detainee is offered a medical review of the use of the restraints which they may refuse.

6.28 We acknowledge there are circumstances in which the use of force is both necessary and appropriate to ensure the safety of an individual or others. When it is used, force must be a measured response that is proportionate to the situation. Where restraints are applied, they should be used for the shortest period of time necessary to support the operational requirement and never for punitive purposes.

6.29 Mechanical restraints are the only form of restraint approved for use in immigration detention. The use of chemical restraints and irritants, including oral or airborne delivery or munitions by ABF and their service providers, is prohibited.²¹ During this inspection cycle there was no evidence to suggest chemical restraints or any type of munitions/irritants had been deployed.

6.30 There are four categories of mechanical restraints approved for use within the immigration detention network: handcuffs, body restraints, spit hoods and head protection.²² The primary restraint used is the SAF-LOK Mark 5 Security Hinged Handcuff. This restraint does not provide for a detainee to eat, drink or go to the toilet with ease. Where used on long haul transfers, we observed:

- a. on air transfers, where a detainee needs to use the toilet the detainee is transferred into the SureLock Humane restraint (body belt). This occurs in the aircraft galley and impedes cabin crew movements.
- b. road transfers are generally undertaken using the SureLock Humane restraint.

6.31 We have made previous recommendations against the use of this restraint on long haul transfers and note the department's agreement to our recommendations that the SAF-LOK MK 5 Handcuff is an unsuitable mechanical restraint for use for extended periods of time²³. However, we acknowledge the detainee population tends to view placement in the humane restraint as a poor reflection on their mental health and will willingly be handcuffed in preference to being placed in a body belt. We understand that this reticence to be placed in the humane restraint may be attributed to the detainee's view that this is a type of restraint that is associated with use in inpatient mental health treatment.

²¹ Department of Home Affairs: *Detention Services Manual – Safety and security management – Use of Force*, dated 10 October 2018., p.7

²² Ibid, Annex A.

²³ Commonwealth Ombudsman Report 01/20, *Department of Home Affairs: Immigration Detention Oversight, Review of the Ombudsman's Activities in Overseeing immigration detention January to June 2019*, February 2020, pp 25 and 32.

6.32 We did not note any use of spit hoods or head protection during this inspection cycle. Our review of relevant camera footage showed an increased willingness for staff to attempt to de-escalate a situation in preference to using additional restraints.

6.33 In our previous report we noted that requests to use mechanical restraints did not clearly identify the type of restraint to be applied.²⁴ We are satisfied that sufficient safeguards are now in place to ensure that the approving authority (ABF Superintendent) is fully aware of the type of restraint applied for when managing an unplanned incident or when planning to move high risk detainees.

6.34 We are concerned that current policies and risk assessment processes support a decision to automatically apply mechanical restraints to a detainee during T&E activities, rather than considering alternative mitigation strategies like more escorting staff or closer escorting practices.

6.35 During the period covered by this report the Office concluded an investigation into one complaint about excessive use of force (See Part 4 above). We are concerned that there appears to be an increasing tendency across the immigration detention network for force to be used to resolve conflict or non-compliant behaviour as the first rather than last choice, and can be exercised in a manner both inconsistent with the department's procedures and possibly without legal basis. We made four recommendations for the department to address these issues.

Safety and security

External inspection

6.36 Several external oversight bodies undertake regular assessments in, or of immigration detention facilities. These include this Office, the Australian Red Cross, the Australian Human Rights Commission and the United Nations High Commission for Refugees.

6.37 Each oversight body appoints inspection staff according to its own policies and procedures. Where agencies publish reports, these are generally available on their respective websites.

6.38 This Office has received free and full access to all areas of detention facilities, and the department and service providers have actively encouraged our presence on site. At all facilities staff were willing to engage with members of the inspection team and provide all information requested.

Bullying and victimisation

6.39 We are satisfied there are policies and procedures in place to address allegations of bullying and victimisation between detainees and between detainees and staff. In addition, the structures in place to support the welfare and wellbeing of detainees—including complaint mechanisms, inspections, and advocacy and visitor interactions are sufficiently robust to support the identification of vulnerable detainees who may be subject to bullying.

²⁴ Ibid p. 19.

6.40 Our reviews indicated that where department or provider staff have identified bullying or “stand over” behaviours, these have been managed or addressed appropriately. In most instances the perpetrator is a detainee and the victim(s) fellow detainees or staff. Detainee bullying and victimisation is addressed through training and education. Allegations of bullying by a staff member are investigated and, where substantiated, there are various actions open to a manager ranging from administrative or disciplinary action through to dismissal.

6.41 That being said, we are concerned that information about these behaviours is not always shared with other operational areas that need to be aware of bullying or harassment. For example, the allegation may be investigated thoroughly by the Residential Facilities Operations Manager but details are not always passed on to other areas such as Welfare to assist in monitoring the detainee’s wellbeing. The suggestions made to onsite managers in regard to this practice have been accepted and we will monitor the passage of this type of information during future inspections.

Contingency plans

6.42 During this inspection cycle we reviewed 50 per cent of facility contingency plans and did not note any significant anomalies. We noted that:

- a. The contingency plans relating to evacuation do not identify a “safe location” outside the facilities that could be used in the event that the facility was not able to continue operating or the facility was threatened by fire, flood or other significant disaster.
- b. Liaison with local emergency services and hospitals was embedded in all relevant plans and there was evidence to support regular engagement between all stakeholders.

Recommendation 9

We recommend that the department, in conjunction with its service providers, identify and include potential external “safe locations” and liaison requirements in the relevant contingency plans.

6.43 During this inspection period we did not undertake a review of the emergency evacuation drills, their frequency or specific provisions for vulnerable or otherwise impaired detainees. We undertake periodic reviews of contingency plans, approximately once every two to three years or when circumstances warrant it, such as the opening of a new compound or major unrest in a facility.

Facilities

6.44 The department did not open or close any purpose-built IDFs during this period, but we note the department established an increased number of Alternative Places of Detention (APODs).²⁵ In addition to the ‘pop-up’ APODs established in each of the states and territories’ capital cities, there are three semi-permanent facilities in Brisbane, Cairns and

²⁵ APODs can be established in locations including hospitals, mental health facilities, aged care facilities and hotels, and used for various reasons and lengths of time across the network.

Darwin and a fourth was established in Melbourne in the early stages of this inspection cycle.

Accommodation

6.45 Having assessed the residential facilities against standards such as the Mandela Rules²⁶ and the Standard Guidelines for Corrections in Australia,²⁷ we consider that the standard of detainee accommodation across the network is generally appropriate, with the exception of the Blaxland High Security Compound (BHSC). We note that all detainees were relocated in March 2020 from BHSC to a purpose built high security compound within the Villawood Immigration Detention Centre.

6.46 While the department has acknowledged our concerns about the modularised high security compounds including issues affecting mobility access, storage and placement of toilets and washbasins, we did not note any substantive change to these compounds. We note the high security compounds have access to free to air television, but we remain concerned that a single television placed in a multipurpose common room is not sufficient to support operational stability and detainee compliance.

6.47 There is still no mobility access to the high security residential compounds at Yongah Hill and Melbourne, which means high security risk mobility impaired detainees must be placed in the general population.

6.48 We acknowledge there has been some improvement in the provision of privacy screens in showers, but it remains that the toilets in the detainee processing waiting areas continue to have limited privacy screening, with the door from the waiting area to the processing areas opening directly onto the toilet. In the accommodation areas the showers have been curtained but the toilets have not been provided with any privacy screening other than placement in an alcove within the detainee's room. We did not observe that detainee storage lockers or similar had yet been installed at Brisbane or Yongah Hill.²⁸

APODs

2.65 During this reporting period, we continued to highlight our concern about the facilities provided in non-medical APODs. These include shortfalls in daily access to outdoor recreation areas, dining areas also being used as multi-purpose rooms and medical and mental health clinics that are set up in a way that does not support detainees' right to private consultations.

6.49 We acknowledge that the department is limited by local supply and demand and the provision of one large hotel-based APOD tends to be operationally preferable to multiple smaller locations. However, the department has a duty of care to detainees to ensure they can access facilities that are fit-for-purpose and meet their fundamental human rights.

6.50 We noted an improvement in the Brisbane ITA's provision of outdoor recreation areas, with a shuttle service being provided to ferry detainees between the APOD and the

²⁶ The United Nations Standard Minimum Rules for the Treatment of Prisoners (The Mandela Rules), adopted 17 December 2015.

²⁷ www.corrections.vic.gov.au/guiding-principles-for-corrections-in-australia

²⁸ Commonwealth Ombudsman Report 01/20, *Department of Home Affairs: Immigration Detention Oversight, Review of the Ombudsman's Activities in Overseeing immigration detention January to June 2019*, February 2020. pp .9–14 and 33.

Brisbane ITA. In addition, a common area on the fourth floor has been opened to provide a separate area for activities. Despite these improvements, the limitations imposed by the configuration of the complex hinder detainees' freedom of movement, and the issue of the smoking and dining areas being collocated remain. The overcrowding noted in our previous report has been addressed.

6.51 The Melbourne APOD²⁹ experienced similar challenges during the period of this report. While the sleeping accommodation is appropriate with a maximum of three to a room,³⁰ the common areas are small and cramped. After 9 pm, the only smoking area is a balcony where the smoke may enter the accommodation. Outdoor recreation is only available by "excursions" to the Melbourne ITA to use the facilities available there.

Food and drinking water

6.52 We consider that the quality and quantity of the food available to detainees across the detention network was generally reasonable, acknowledging the inherent challenges in catering for a large number of detainees with diverse cultural and religious requirements. All compounds and the non-medical APODs have access to all day breakfast (cereal, bread, milk, condiments and instant noodles).

6.53 Drinking water is readily available and to the same standards as the Australian community. There are limited provisions for self-catering across the network with Adelaide ITA being one of the few facilities that can offer this option. There were no pregnant women in detention during this detention cycle, but we were satisfied that appropriate food would be available should this be necessary.

6.54 There were fewer than six children/minors in detention during this period, with one over the age of 16 and the remainder under five. We are satisfied that appropriate meals were made available to their parents.

Sanitation and hygiene

6.55 All detainees have access to appropriate hygiene facilities and are able to access an ensuite shower and toilet, or communal shower and toilets when placed in the dormitory-style accommodation. All ablution areas have unlimited access to hot and cold running water. Every residential compound has a laundry with appropriate clothes driers. All detainees are supplied with toiletries suitable to their needs including feminine hygiene products and nappies.

Property

Clothing

6.56 All detainees are permitted to wear their own clothing within the facility or to external appointments including court hearings. If necessary, age, gender and culture specific welfare clothing is available or easily obtained.

²⁹ A semi-permanent facility separate from but managed and operated by the Melbourne ITA.

³⁰ We have been advised by ABF that this has since reduced to single occupancy with the outbreak of COVID-19 and social distancing rules, although some detainees are continuing to choose to share a room.

Cash and possessions

6.57 The facilities used for property management and storage at most facilities are generally appropriate for purpose. While valuables, money and other property that the detainee does not wish, or is not permitted to have in their possession are securely stored, we are concerned that not all compounds and APODs have capacity for detainees to secure personal possessions in their rooms. Where a detainee is unable to adequately secure their property there is a risk that property will be lost or stolen. These situations can generate concern between individuals and groups that can escalate into non-compliant behaviours including assaults, aggressive or abusive behaviour and unrest.

Recommendation 10

We recommend that the department ensures all bed spaces have a secure storage area where a detainee may secure their in-possession property.

Welfare and engagement

Programs and activities

6.58 All detention facilities provide a program of activities to support a detainee's wellbeing. These programs should reflect the needs of all detainees including specific groups such as the elderly, women, children and people with disability.

6.59 Detainees are not permitted to work while in immigration detention, but are encouraged to participate in programs and activities that support their ongoing mental health. As part of this, facilities have implemented an incentive program or individual allowance program where, by attending activities, a detainee may earn points to spend at the facility's canteen.

6.60 Where the detainees do not have freedom of movement within the detention centre, access to activities is often adversely impacted. As noted in our previous report,³¹ the controlled movement model does not support freedom of movement and limits access to appropriate recreational activities or otherwise limits these activities to what can be provided within the residential compounds.

6.61 We acknowledge the department's view that the controlled movement model is used to support the safety, security and wellbeing of detainees but remain concerned that, where access to communal programs and activities is reduced, it is essential that detainees have access to in-compound activities that are relevant and meaningful and support detainee mental and physical health.

Education

6.62 We noted continued improvement in the availability of age-appropriate adult education activities across the network, although skills development was limited to a few vocational education programs and other basic courses. We noted an increasing number of

³¹ Commonwealth Ombudsman Report 01/20, *Department of Home Affairs: Immigration Detention Oversight, Review of the Ombudsman's Activities in Overseeing immigration detention January to June 2019*, February 2020. Recommendation 2 pp 8-9.

facilities offering a higher number of self-development programs such as anger management and parenting programs.

6.63 Children are catered for and enrolled in age appropriate activities including play groups and pre-school. Minors of school age were actively encouraged to participate in on-site tutoring.

6.64 All facilities have a gymnasium, as well as outdoor recreational areas of varying quality and size. Detainees can generally access these either within their residential compounds or in the common areas of low security compounds. We are satisfied that detainee access to outdoor recreation spaces has improved, with detainees held in the Brisbane and Melbourne APODs now having access to an outdoor recreational area for a minimum of 60 minutes each day.

Culture and religion

6.65 Cultural activities are well supported, with most facilities providing appropriate activities to celebrate significant cultural and religious festivals. There is a library in each facility and our reviews indicate that the libraries hold a sufficiently diverse range of books to cater to most cultural and religious tastes. In addition, all facilities offer art and craft classes, although the standards of these varied.

6.66 We are satisfied that there are appropriate policies and procedures in place to support a detainee wishing to participate in religious services. All facilities have dedicated rooms in each compound or semi-permanent APOD that can be used for religious purposes.

6.67 Our observations of available programs and activities, and discussions with the staff undertaking the role of the religious liaison officers in each facility, suggests that detainees are supported to practice their religion or participate in religious services or pastoral care. There was no evidence to suggest that detainees were either coerced to attend particular religious activities or denied the right to practice the religion of their choice.

6.68 However, the ABF continues to ban all religious excursions. We acknowledge the department's advice³² that this is being reviewed but it remains that, during this inspection period, detainees were not permitted to attend a place of worship and all religious observances were conducted on site.

Welfare and counselling

6.69 Overall, we noted an improvement in the welfare support provided to detainees across the detention network. However we are concerned that a trend is emerging in some facilities where security considerations commonly outweigh welfare considerations, to the point where decision-makers do not even seek input from welfare staff to review detainee circumstances. Welfare staff may have information or insights into a detainee's circumstances that may not otherwise be available and we consider their input should be valued and actively sought to ensure well-informed and reasoned decision-making.

³² Commonwealth Ombudsman Report 01/20, *Department of Home Affairs: Immigration Detention Oversight, Review of the Ombudsman's Activities in Overseeing immigration detention January to June 2019*, February 2020. Annex A.

6.70 We observed that welfare staff are generally proactive and responsive to detainee needs and appropriately qualified or experienced to undertake their duties. Detainee privacy is maintained with any information sharing occurring only on a need to know basis.

6.71 Welfare staff are not required to accompany detainees on release from detention and we are satisfied that there are appropriate mechanisms to support a detainee on release into the community. We did not assess the provision of welfare support to detainees on removal to another country.

Visits and external communication

Visits

6.72 We are satisfied that the department has a robust visitor access policy that supports visits to detainees by family friends and support networks. The process for booking visits is electronic. The difficulties that occurred when the system was first introduced have now been resolved for people wishing to visit a single detainee, but we understand it remains problematic for social groups who wish to visit with more than one person at a time.

Recommendation 11

We recommend the department, as part of its next review of the electronic visits system, explore options to enable a visitor to schedule visits with multiple detainees in one application.

External communication

6.73 All detainees have access to external communication through fixed telephones, mobile telephones (belonging to detainees), internet, facsimile and letters. There was no evidence to suggest that detainees are denied, or have their access restricted to external communication, or that these communications were monitored or otherwise interfered with.

6.74 We are satisfied that the department has appropriate procedures and policies in place to advise detainees that they have open access to monitoring organisations such as ourselves, the UNHCR, the Australian Red Cross and the Australian Human Rights Commission. There was no evidence to suggest that detainees were prevented from accessing relevant consular or other diplomatic services.

Health Care

6.75 Our Office is developing its capability and is yet to undertake a comprehensive assessment of the following areas of health care as part of the National Preventive Mechanism inspection regime:

- a. treatment of detainees by external medical and mental health professionals during appointments or hospital admissions
- b. management of detainee privacy and status as an immigration detainee when attending external appointments
- c. reasonableness of decisions to segregate a detainee in accordance with public health policies

- d. conduct of onsite medical and mental health consultations
- e. prescription and assessment of medications.

Access to medical care

6.76 Based on the inspections we have conducted, we are satisfied of the following:

- a. The department has policies and procedures in place to support the provision of medical care to community standards.
- b. All detainees have on site access to suitably qualified medical staff including a general practitioner and nursing practitioners.
- c. Medical staff have access to interpreters to support their consultations with detainees.
- d. Records management is centralised and protocols are in place to provide a copy of the detention medical record to community medical services on discharge or removal.
- e. Medical care is provided free of charge to detainees in line with community standards.
- f. There is no evidence to suggest that detainees requiring medical treatment have been denied.
- g. Referrals to specialists including women’s health, paediatric, gerontology etc. and, where required, admissions to hospitals are available in line with community standards.
- h. There is an established 24-hour system in place to respond to medical emergencies including access to onsite medical staff, after-hours access to telephone health advice and local ambulance and hospital services.
- i. All detainee medication is reviewed on arrival and adjusted if required to meet Australian standards.
- j. Medical facilities in all detention facilities are clean, well-lit and accredited to state or territory standards. Annual accreditation is undertaken through the parent company of the International Health and Medical Services, and the Royal Australian College of General Practitioners undertakes an accreditation of all designated Immigration Detention Centres as required.

6.77 We remain concerned that a small number of detainees are not attending external specialist medical or mental health appointments or clinical testing due to the requirement for all high or extreme risk detainees to wear mechanical restraints.

6.78 Detainees have advised inspection staff they feel embarrassed when walking through hospitals, shopping precincts and other public areas in handcuffs. We acknowledge that all requests for mechanical restraints are cleared by medical staff, but note that clearance is given from the perspective of any medical or mental health reason that would prevent hand cuffs being worn, rather than whether the use of handcuffs would adversely impact on the detainee and cause a refusal to attend.

6.79 While noting the department cannot force detainees to attend appointments, we consider that refusals to do so raise a risk of individuals not receiving timely medical care.

Recommendation 12

We recommend that, where a high or extreme risk detainee refuses to attend a medical appointment due to being mechanically restrained, the department considers alternative mitigation such as increased escorts, onsite or telehealth consultations to encourage detainee attendance at medical appointments.

Personnel/staffing

Staff/detainee relationships and security

6.80 The quality of staff/detainee relationships varies across the detention network. Dynamic security practices are in place in most facilities and we note that, in general, detainees are treated with respect and dignity. Both department and service provider staff are aware of their duty of care to the detainees and actively support the good order, security and wellbeing of detainees.

Staff Recruitment, training and conduct

6.81 We are satisfied that the department and its service providers have appropriate procedures and policies in place to support recruitment, staff training and complaints about the conduct of staff.

6.82 We will assess the efficacy of staff recruitment and training as part of the National Preventive Mechanism inspection regime.

Persons in situations of vulnerability/risk

Basic Principles

6.83 We are satisfied that the department has basic principles in place for managing vulnerable detainees, including considering alternatives to held detention for people with identified vulnerabilities. The department also has policies in place regarding anti-discrimination and equality, including options for detainees to make complaints about alleged discriminatory practices.

6.84 The department has advised us that staff training in equality and non-discriminatory practices is delivered in accordance with the respective organisation's training and accreditation processes.

Children

6.85 While children are not held in immigration detention centres, they may be held in alternative places of detention such as immigration transit accommodation and other APODs. During the July to December 2019 inspection cycle, there were up to five children held in immigration detention at the MITA and the Phosphate Hill APOD. One of these was an unaccompanied minor who turned 18 during the inspection cycle and the remainder

were children under the age of five who were held with their parents either as detainees or guests of the department.³³

6.86 There was no evidence to indicate that children were inappropriately held in detention away from their parents. Those children in held detention were housed with their parents in appropriate facilities.³⁴ The one unaccompanied minor, who has since turned 18, was provided with separate living accommodation, opportunity for onsite schooling tailored to their circumstances, independent care providers and appointed a guardian. These arrangements ceased when they turned 18 and our review of the transition plan indicated that, while there were some minor delays and miscommunication, it was generally handled well.

Women

6.87 Women are accommodated separately to males, either in separate compounds (Melbourne, Perth and Villawood) or separate accommodation blocks (Adelaide). Where a non-medical APOD is used, female detainees are accommodated with family members, in shared rooms with another female, or in a single room.

6.88 Mixed gender staff are allocated to manage detainees, with female staff allocated to undertake pat searches and any other activity that requires privacy. During this inspection cycle there were no pregnant women in immigration detention. Facilities in all detention facilities are suitable for housing women.

Persons with mental or physical disability

6.89 We are satisfied that the department has policies and procedures in place to manage the specific needs of detainees with a mental or physical disability. During this inspection period we observed that, wherever possible, the department attempts to house detainees with significant mental health or physical challenges in appropriate community facilities such as nursing homes. However, these placements can take time to be negotiated and implemented.

6.90 We did not identify evidence that any detainee had been deprived of their liberty on the basis of their disability.

6.91 We are satisfied that, in addition to self-referral to health services, all detainees are assessed by medical and mental health professionals on arrival and every 12 months thereafter. This provides the opportunity to identify any new conditions and/or monitor mental and physical disabilities that do not require more frequent assessments.

6.92 We are aware that some detainees with disabilities associated with age or mental capacity are provided with carers while awaiting placement in Tier Four facilities. We acknowledge the challenges that the department experiences in placing detainees in

³³ A guest of the department is a citizen or lawful non-citizen who by virtue of age or other factor resides with a detainee. For example a young child whose father is an Australian citizen but mother is an unlawful non-citizen may reside as a guest of the department in immigration detention with their mother.

³⁴ *United Nations Convention on the Rights of the Child*, General Assembly resolution 44/25 of 20 November 1989.

appropriate Tier Four facilities,³⁵ but note that delays of months and years are not appropriate or conducive to the wellbeing of affected detainees.

6.93 There was no evidence to suggest that detainees with mental and physical health support requirements are treated in a manner that contravenes community standards for care and support.

Stateless persons

6.94 At the commencement of this inspection cycle (July 2019) there were 56 stateless persons detained in immigration detention facilities. At the end of the cycle (December 2019) that number had been reduced to 42.³⁶ We remain concerned that most stateless detainees continue to be held in immigration detention for extended periods of time because of the difficulties in resolving their status.

6.95 There was no evidence to suggest that stateless detainees are managed differently from other cohorts. It is apparent from our ongoing observations and assessments that, while detainees in particular cohorts will be on similar immigration pathways and managed accordingly, they are treated as individuals. We also did not identify any evidence to suggest that this group of detainees is discriminated against because of their status.

LGBTQIA+ persons

6.96 We are aware there are LGBTQIA+ persons detained in various facilities. In our opinion the management of this cohort broadly accords with Australian Government standards³⁷ with separate accommodation available for transgender detainees, acknowledgement of partnered relationships and access to medical and mental health support tailored to each detainee's needs. We have not yet undertaken an assessment of how specific medical and mental health services are provided to detainees who are transitioning, or have transitioned to another gender.

6.97 We observed that detainees who advised compound staff that they felt vulnerable due to their transitioning status were managed appropriately and placed in secure single occupancy accommodation. This accommodation is separate from both males and females but detainees are able to socialise with the gender with which they feel most comfortable.

6.98 We noted that staff/detainee engagement was respectful and detainees were treated in a dignified manner including being addressed by their preferred name and pronouns and provided with their choice of welfare clothing where required.

³⁵ Department of Immigration and Border Protection: *Detention Capability Review: Final Report*, August 2016.

³⁶ Department of Home Affairs, *People in Detention Report* dated 26 June 2019 and 24 December 2019.

³⁷ Attorney General's Department, *Australian Government Guidelines on the Recognition of Sex and Gender*, updated November 2015.

APPENDIX A

DEPARTMENT RESPONSE

Department response

The Department of Home Affairs (the Department) welcomes the Commonwealth Ombudsman's Report *Immigration Detention Oversight – Review of the Ombudsman's activities in overseeing immigration detention from July to December 2019* (the Report).

The Department values the Commonwealth Ombudsman's oversight of immigration detention, and observations made in this report of overall improvements in a number of areas ranging from the provision of welfare services to transport and escort tasks within alternative places of detention.

The Department agrees with the majority of the recommendations made in this report.

Progress against recommendations in the January to June 2019 report

The Department welcomed observation made in the Ombudsman's January to June 2019 report that the operational and administrative functionality of the immigration detention network had improved since the 2018 inspection cycle.

The Department acknowledges the Ombudsman's analysis of the Department's progress against each of the 16 recommendations in the January to June 2019 report. The Ombudsman's analysis reflects improvements observed during the July to December 2019 inspection period. It is worth noting that in some cases, up to twelve months has passed and further progress has been made, as the Department continues to progress the implementation of recommendations as a priority.

Section 486O assessments

The Department acknowledges the Ombudsman's concern regarding people who remain in immigration detention for prolonged periods pending resolution of their immigration status. The Department has in place a framework of regular reviews, escalations and referral points to ensure that people are detained in the most appropriate placement to manage their health and welfare, and to manage the resolution of their immigration status.

Each detainee's case is reviewed monthly by a Status Resolution Officer to ensure that emerging vulnerabilities or barriers to case progression are identified and referred for action. Monthly detention review committees also provide formal executive level oversight of the placement and status resolution progress of each immigration detainee.

Detainee placement decisions are guided by a nationally consistent process that addresses the safety and welfare of detainees while ensuring the safety and good order of the immigration detention network.

Detainees' circumstances are considered in determining the most appropriate placement. These include:

- physical and mental health concerns
- the detainee's needs including age, length of detention, family connections, fitness to travel
- available services and facilities at an immigration detention facility
- the risk profile of the detainee, and
- the risk profile of the receiving immigration detention facility.

A recommendation from the Ombudsman for detainee transfer triggers a special review of the detainee's circumstances. If, as part of this review, a detainee indicates they no longer wish to transfer to an immigration detention facility closer to their family, the Department will not facilitate the transfer, but will continue to provide access to communication services, including skype, telephone and email access.

Where a detainee can only be released from immigration detention through Ministerial Intervention powers, their case is assessed against the Minister's intervention guidelines, and if assessed as being met, a submission is referred for the Minister's consideration. A submission contains all relevant information pertaining to a detainee's case, including the persons' biodata, family composition, immigration history, health and wellbeing, conduct in detention, character and security. The Department notes the Minister's personal intervention powers are non-compellable, the Minister is under no obligation to consider a case or to make a decision on a case, and only the Minister can exercise this power. The Minister is also not required to provide an explanation for the decision and is not bound by any timeframes.

Internal complaint handling

The Department is pleased the Ombudsman is satisfied that detainees have access to a confidential complaints process, that the Department is acknowledging and responding to detainees' requests appropriately, and observed that most requests were addressed within a reasonable timeframe.

The Department acknowledges the Ombudsman's comments regarding inconsistency and quality assurance. The Department provides guidance through the Complaints Management procedural instruction and standard operating procedure and works with the Facilities and Detainee Service Provider, Serco, to ensure complaints are dealt with in a timely manner, and responded to appropriately. The Department undertakes a network-wide comprehensive quality assurance process for complaint handling, as well as overseeing all responses. Serco's performance is continually reviewed, and where required, the Department works with Serco to improve the quality of responses to detainees.

Use of force

The Department agrees with recommendations one and two, agrees in part with recommendation three, and disagrees with recommendation four. The Department welcomes the Ombudsman's acknowledgment that there are circumstances in which the use of force is both necessary and appropriate to ensure the safety of an individual or others, and is pleased the Ombudsman's review of relevant camera footage demonstrated staff efforts to de-escalate a situation in preference to using additional restraints.

In carrying out its services, Serco is required to comply with all applicable Australian laws and departmental policies and procedures notified to them. The Department will remind Serco that its Authorised Officers must only use force as a last resort, and only for the purposes outlined in policies and procedures.

A rolling annual forward work program of independent detention assurance reviews is in place and reviewed quarterly. The program comprises referrals from senior executives within the Department and from external scrutiny agencies, as well as systemic issues and risks identified through regular monitoring of the immigration network. Progress is reported regularly to the Department's Audit Committee.

The use of force incident outlined in this report was referred in February 2020 to be considered for an independent detention assurance review, after the Ombudsman finalised its investigation and recommended that the incident be considered. The Department incorporated the matter into a planned detention assurance review into use of force at the relevant immigration detention facility which commenced in March 2020 and remains underway.

While the Department acknowledges the circumstances raised in the complaint, and will provide feedback to Serco regarding the concerns outlined in this report, the Department does not consider it appropriate to issue an apology at this time.

Detained and released as not unlawful

The Department welcomes acknowledgement of its increased focus on taking both detective and preventative corrective actions aimed at treating systemic issues and managing broader risks that affect certain cohorts. We also welcome observations that the controls appear to have been increasingly effective at preventing, detecting and correcting the numbers and duration of inappropriate detentions.

The Department values the Ombudsman's continued oversight to monitor and advise on improvements, particularly the effectiveness of preventative action.

Inspection outcomes

Overall, the Department is pleased with the level of satisfaction reported by the Ombudsman across the breadth of his immigration detention monitoring, and agrees with recommendations five to twelve.

Detention and immigration procedures

The Department welcomes acknowledgement in the report that Serco staff provide detainees with information about review rights, including legal review, during the induction process. To supplement this advice, the Department will develop signage for display in immigration detention facilities advising detainees of their right to access legal services.

As noted in the report, all immigration detention facilities have an established induction and reception process that covers the primary topics a detainee needs to know and there has been an improvement in the availability of multilingual induction packages.

Detainee inductions are undertaken by Serco staff, who are required to provide detainees with information and advice on their rights and responsibilities, amenities, communications, access to support services, entitlements and 'how to' information. This information is provided in the detainee's preferred language with the aid of an interpreter to read it to them or provide translated material as appropriate.

Transport and escort

The Department welcomes the Ombudsman's observation that detainees involved in transfer operations are generally treated with dignity and respect throughout the operation. Departmental policy allows detainees access to books and magazines during transfer operations. SkyTraders, the company contracted to provide detainee transfer operations, has agreed that it may provide reading materials to detainees during transfer operations. The provision of reading material will be based on availability and, for operational safety reasons, will be dependent on the detainees' demeanour.

It should be noted that in the current COVID-19 environment, the Department does not support the provision of shared in-flight entertainment materials to detainees.

Treatment and safeguards

The Department welcomes observations by the Ombudsman that the Department has processes and procedures in place to support detainees with a history of torture and trauma, mental and behavioural issues and that placement of detainees in high care accommodation was reasonable in each of the reviewed cases.

The Department notes the Ombudsman's inspections did not identify any instances where high care accommodation was used inappropriately, including for punitive purposes, but acknowledges the Ombudsman's concern that the threat of placement in high care accommodation may be being used by a small number of Serco staff to influence detainee compliance. The Department has sought assurances from Serco that facility staff have been reminded that this is not appropriate in managing non-compliant behaviour, and this will also be reiterated in refresher training provided to Serco staff.

Safety and Security

The Department notes that the Ombudsman reviewed 50 per cent of facility contingency plans this inspection cycle with no significant anomalies identified. The Ombudsman found liaison with local emergency services and hospitals is embedded in all relevant plans and there was evidence to support regular engagement between all stakeholders.

The Department is currently reviewing all immigration detention facility business continuity plans (BCPs). The current BCPs provide that in the event of a disruption requiring evacuation of a facility, detainees will be transferred to a designated alternative location. Part of the review will include emergency consultation with all critical on-site stakeholders to relocate to a suitable alternative location, investigate potential external safe locations, and detail liaison requirements in the plans.

Property

The Department notes the Ombudsman found the facilities used for detainee property management and storage at most immigration detention facilities are generally appropriate for purpose. The Department is committed to progressively providing further personal lockable storage across the immigration detention network so that detainees may secure their in-possession property.

Visits and external communications

Regarding visits to detainees by family, friends and support networks, the Ombudsman was satisfied that the Department has a robust visitor access policy. The Department's electronic visits system reflects the current detention operational policy that visitors are generally only permitted to visit one detainee, once per day. Exceptions may be considered by the Australian Border Force Detention Superintendent at the immigration detention facility in limited circumstances, for example, where a visitor seeks to visit a family group.

The Department's detention operational policy with respect to Visitor Management is scheduled for review this year. As part of the review, the Department will consider exploring options to enable a visitor to schedule visits with multiple detainees in one application.

Health care

The Ombudsman's report records a significant level of satisfaction regarding access to medical care. The Department acknowledges the Ombudsman's concern that a small number of detainees may refuse to attend a medical appointment due to the need to be mechanically restrained.

Under departmental operational policy, as well as Serco's contract, Serco is required to prepare a risk analysis and consult with the detention health service provider to ensure that no medical reasons preclude the use of force including application of restraints on a detainee. Any concerns a health provider may have are referred to the relevant Australian Border Force Detention Superintendent for consideration along with other relevant factors including the safety and security of the community and the detainee.

If a detainee claims to refuse the use of mechanical restraints when appearing to refuse consent to medical treatment, the detention health service provider will clarify whether the detainee is actually refusing medical treatment or not. This is because the detention health service provider must give the detainee sufficient information to make a decision on the treatment being offered and this must be documented in the health care record. The refusal by a detainee to attend a medical appointment, for any reason, is not a refusal by the Department or its service providers to provide that treatment.

Wherever possible, health and medical services are provided onsite at the immigration detention facility in the first instance. Where clinically indicated, appropriate referrals to external health professionals will be made. If available, Telehealth can be offered as an alternative to an offsite appointment.

APPENDIX B

Progress on recommendations

Recommendation 1: Robust legislative framework

We recommend that the department seek ministerial authority to bring forward a Bill, which would establish a legislative framework to support all internal operations of the immigration detention network.

Department response: Agreed

Our analysis on progress: Since our last report the *Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020* has been introduced to parliament. We remain of the view that while the administrative framework is comprehensive, a robust legislative framework is essential for the safety, security and wellbeing of immigration detainees.

Recommendation 2: Operational Model

We recommend that, as far as possible, the department:

- a. *permit detainees maximum freedom of movement within an IDF*
- b. *limit the use of the controlled movement model to circumstances where the use of this model is consistent with not only the ongoing safety and security of the facility but also the wellbeing of detainees.*

Department response: Agreed

Our analysis on progress: During this reporting period we observed that the movement of detainees within the immigration detention facilities remains restricted or controlled. We acknowledge the department's advice that this model is regularly reviewed and applied to support the safety and security of the detainees. We remain of the view that, in ordinary circumstances, this operational model should be limited to high risk situations and, wherever possible, detainees should have maximum access to common areas. However, in the context of preventing COVID-19, it may be appropriate and, in fact desirable, for movement to be restricted to ensure social distancing.

Recommendation 3: Blaxland High Security Compound to be decommissioned

We recommend that, as a priority, the Blaxland High Security Compound be decommissioned

Department response: Agreed

Our analysis on progress: Fully implemented. Since the time of our report all detainees have been transitioned from the BHSC into the Villawood Immigration Detention Centre.

Recommendation 4: Facilities in long term Alternative Places of Detention (APOD)

We recommend that, wherever practicable, the department sources APODs that cater to the longer-term needs of detainees through the provision of appropriate and accessible facilities.

Department response: Agreed

Our analysis on progress: During this cycle we observed that the department was taking steps to address the shortfalls in facilities in the long term APODs, with the introduction of expanded common room facilities and daily excursions to the main detention facility. We will continue to monitor the range and suitability of facilities within APODs.

Recommendation 5: Design and fit out of the modularised high security compounds

We recommend that the department:

- a. *addresses concerns with the design and fit out of the modular high security compounds, in particular by:*
 - i. *ensuring suitable access to facilities for mobility impaired detainees, including building access*
 - ii. *providing privacy in all ablution areas and toilets*
 - iii. *cabling individual accommodation rooms to enable access to free to air television programs*
 - iv. *providing suitable in-room secure storage for in possession property.*
- b. *ensures that all future use of the modularised compounds are designed and fitted out to support the ongoing health and welfare needs of detainees, in addition to the good order and safety of the centre.*

Department response: Agreed

Our analysis on progress: A number of the issues we have raised will require capital works and are unlikely to be addressed in the short term. We remain concerned that, despite the department's assurances, mobility impaired detainees continue to be placed in high security compounds.

Recommendation 6: Secure storage of intrust detainee property—Fully implemented

We recommend that:

- a. *the department address the shortfalls identified in the property storage facilities at Villawood*
- b. *Serco ensure that all money and valuables held in trust for a detainee are stored securely.*

Department response: Agreed

Our analysis on progress: The concerns we raised in our previous inspection report about shortfalls in property storage facilities at Villawood have been addressed.

Recommendation 7: Equitable access to activities

We recommend that the department:

- a. *ensures all detainees have appropriate access to programs and recreational facilities within accommodation compounds*
- b. *ensures equitable access to communal recreation and activity facilities for all detainees.*

Department response: Agreed

Our analysis on progress: During this inspection cycle we observed an improvement in access to activities, both in-compound and in common access areas. However we consider further work is needed to ensure all detainees, regardless of their security risk assessment, have fair and equitable access to the available programs and activities.

Recommendation 8: Personal Officer Scheme

We recommend that the department:

- a. *reinstates the traditional POS model in all IDFs*
- b. *ensures each detainee has an allocated POS officer who is responsible for monitoring and reporting on his or her day-to-day welfare needs.*

Department response: Agreed

Our analysis on progress: We continue to monitor implementation of this recommendation.

Recommendation 9: External recreation and religious excursions

We recommend that the department removes the restriction on external recreational and religious excursions for all detainees with an established low behavioural and/or flight risk.

Department response: Agreed

Our analysis on progress: Based on our onsite observations and the briefings we have received from the department, it is apparent that implementation of this recommendation was underway but yet to be completed.

Recommendation 10: Detainees in long term APODs have access to welfare support and appropriate activities

We recommend the department ensures that all detainees placed in an APOD have access to welfare support and age-appropriate educational, recreational, sporting and religious programs and activities, including access to outdoor recreational activities.

Department response: Agreed

Our analysis on progress: Fully implemented. During this inspection cycle we noted an improvement in the provision of welfare and programs and activities for detainees held in long term APODs. Both long term APODs had taken steps to increase onsite welfare support and enhance detainee access to either the main facility or another location sourced within the APOD for activities.

Recommendation 11: Security Risk Assessments

We recommend that the department, in conjunction with its service providers:

- a. review the Security Risk Assessment Tool and associated algorithm to ensure that, as far as possible, it does not unfairly skew the risk rating of detainees*
- b. ensure intelligence analysts are empowered to make recommendations relating to the reduction or escalation of the initial risk assessment of a detainee within their initial 28 days in detention*
- c. ensure a quality assurance program of the information (both historical and current) used to inform the Security Risk Assessments is undertaken prior to any risk assessment being applied to a detainee*
- d. ensure a security, flight or behaviour risk rating of High or Extreme is only applied where there is substantiated evidence to support such a rating*
- e. review and substantiate High or Extreme security risk assessments prior to the rating being used to: (i) support the use of mechanical restraints; or (ii) inform any other activity where a detainee will be placed in restraints, where such placement will cause public embarrassment, or cause the detainee to decline to participate in medical or mental health treatment.*

Department response: Agreed in part

Our analysis on progress: Since the conclusion of the reported inspection period we have not noted a significant improvement in the quality of analysis undertaken to determine a detainee's risk assessment.

We acknowledge that the department has completed a review of the Security Risk Assessment Tool (SRAT) but we are yet to see evidence of any substantive change to the outcomes produced by the updated SRAT. We continue to identify errors in individual risk assessments where detainees are recorded as the offender rather than the victim, undue weighting is placed on offences committed 15 or 20 years ago, or mitigating circumstances (such as being incident free since arrival in immigration detention) are not being taken into account. Intelligence analysis staff onsite are guided to use the SRAT as the definitive tool and not supported to exercise judgement to adjust the assessment, even where it may no longer represent the actual risk posed by the detainee.

We will continue to monitor the implementation of this recommendation.

Recommendation 12: Incident Reports

We recommend that the department in consultation with their service providers ensure that:

- a. all officers who attend an incident produce reports for inclusion in the Incident Report*
- b. ABF and Serco procedures be updated to reflect the need for procedural fairness to be provided to detainees named as a person of interest, prior to the Incident Report being used in any administrative decision-making process.*

Department response: Agreed in part

Our analysis on progress: The department agreed with our recommendation that all officers involved in an incident should prepare an independent report or statement to inform the Incident report. During this inspection period we continued to see instances where an Incident Report reflected that multiple officers attended an incident but only one or two reports were provided.

We continue to monitor the application of procedural fairness arising from a detainee's involvement in an incident. We remain of the view that where an Incident Report is to form part or all of the evidence that will adversely impact a detainee's privileges, in particular their canteen points, it is essential that procedural fairness is given and recorded.

Recommendation 13: Behaviour Management Plans

We recommend that the department:

- a. ensures all BMPs are reviewed in a structured, minuted meeting with representatives from all relevant stakeholders in attendance*
- b. introduces a robust quality assurance program for the development of BMPs to ensure content is relevant, fair, and applicable to the detainee's individual circumstances.*

Department response: Agreed

Our analysis on progress: Our observations during this inspection cycle were that development and review of Behaviour Management Plans (BMP) had not improved. We continue to be concerned that the BMPs include irrelevant or incorrect information, the input by medical and mental health staff is not sufficiently informative to usefully inform decision-makers, and the reviews are poorly documented and do not include all relevant stakeholders.

We remain of the view that the BMPs require further development and substantive improvement, and will monitor the department's implementation of the recommendation.

Recommendation 14: Use of mechanical restraints

We recommend that the department ensure that mechanical restraints are:

- a. only applied for the shortest time necessary*
- b. never used for punitive purposes*
- c. only applied when all other forms of mitigation have been exhausted.*

Department response: Agreed

Our analysis on progress: We did not observe any change to the department's approach to using mechanical restraints. We will continue to monitor this issue at future inspections.

Recommendation 15: Transfer operations

We recommend that the department:

- a. ensures that all risk/threat assessments for transfer operations are relevant to the operational task*

- b. *notes that the Aviation Transport Security Regulations restrict the use of mechanical restraints to circumstances where there is a genuine risk to the safety of the aircraft that cannot be mitigated by any other option*
- c. *direct that, wherever possible, the SureLock Humane restraint (body belt) is the preferred mechanical restraint for all transfer operations.*

Department response: Agreed

Our analysis on progress: Transfer operations were undertaken during this inspection period and we note the department's agreement to our recommendations. We will continue to monitor this activity.

Recommendation 16: Complaint management

We recommend that the department ensures that:

- a. *all staff, including service providers tasked with complaint investigations, are provided with complaint investigation and management training*
- b. *it introduces a network-wide comprehensive quality assurance process for handling complaints*
- c. *Serco includes complaint investigation and complaint management training in its Facility Operations Manager training.*

Department response: Agreed in part

Our analysis on progress: Management of detainee complaints continue to be a key inspection focus for this Office. We acknowledge the department's response that it is *satisfied that the Complaints Management Standard Operating Procedure (SOP) provides appropriate complaint handling guidance to departmental officers working in immigration detention. The department undertakes a network-wide comprehensive quality assurance process of complaint handling, as well as providing oversight of all responses, including timeliness. Where required, the department works with the service provider to improve the quality of response letters to detainees.*³⁸ We acknowledge that the department has not agreed to our recommendation to include complaint management training in its service provider's internal training program.

We have not observed a substantive improvement in the complaint management practices. We continue to note poor identification of the issues raised, responses and record-keeping, and will monitor this issue at future inspections.

³⁸ Commonwealth Ombudsman Report 01/20, *Department of Home Affairs: Immigration Detention Oversight, Review of the Ombudsman's Activities in Overseeing immigration detention January to June 2019*, February 2020, Appendix A.